IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1399 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

MAVAJI RANAJI

Appearance:

MR RC KODEKKAR, APP for Appellant

MS NITA C BANKER for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 28/11/2003

ORAL JUDGEMENT

1. This Appeal has been preferred by the State against an judgment and order passed by learned Judicial

Magistrate, First Class, Kalol, on 20.9.1986 acquitting all the present respondents for the charges framed against them under Sections 326, 324 and 114 of the Indian Penal Code in Criminal Case No. 3405 of 1983.

2. Necessary facts leading to filing of this acquittal Appeal are as under :

The incident occurred at Ambika Nagar, situated in the city of Kalol, on 17.7.1983 at about 18.00 hours. Respondents No. 3 and 4 - original accused No. 3 and 4 had some quarrel on that day about drawing water from a public tape with PW-9 Kamlaben, wife of PW-2 Valjibhai Nagarbhai, who is injured witness. Kamlaben PW9 conveyed this fact to her husband PW-2 Valjibhai about the quarrel took up by original accused Nos.3 and 4. In the meantime, accused No. 1 and 2 respondents No. 1 and 2 herein came running from their house towards the house of the injured Valjibhai and accused No.1 Mavji Ranaji inflicted a blow of dharia on the right parietal region of head. Complainant PW-1 Premabhai Sonabhai, who was neighbour of the injured, attempted to rescue injured in this quarrel, received a blow of stick on his head by accused No.2 Padmaji Ranaji. Thereafter, accused No.3 Kaliben Padmaji, wife of accused No.2 Padmaji, and accused No.4 Dariaben, widow of accused No.1 Mavji Ranaji came to the spot with small sticks and inflicted blows on the leg of the injured Valjibhai. Complainant - PW1 Premabhai Sonabhai also received some stick injuries by accused Nos. 3 and 4. On hearing shouts of the quarrel, crowd was gathered and the accused ran away from the spot. PW-2 injured Valjibhai and PW-1 Premabhai were taken to Kalol Hospital for primary treatment. PW-1 complainant was discharged after primary treatment immediately while the wound received by dharia by PW-2 Valjibhai being serious, was taken to Civil Hospital, Ahmedabad, where for the fracture of skull (bone) he had undergone surgery and remained as an indoor patient at Ahmedabad Civil Hospital for 20 to 25 days, exactly from 17th of July 1983 to 15th of September,1983. On the same day, at about 20.30 hours, complainant Premabhai gave a First Information Report to the Kalol Police Station which was registered and investigation was taken over by PW-7 Exh. 40 Ramsinh, PSI of Kalol Police Station. A charge sheet came to be filed against the present respondents in the Court of Judicial Magistrate, First Class, at Kalol for the offences punishable under Sections 326, 324 and 114 of the IPC, which was registered as Criminal Case No.3405 of 1983. A charge for the above said offence came to be framed against the respondents by learned Judicial Magistrate, First Class,

on 3.12.1984, and each respondent pleaded not guilty, and the prosecution tendered evidence on record to prove the charges. The prosecution examined in all 7 witnesses to prove the case. Complainant Premabhai Sonabhai examined at Exh.15, who has stated that he was neighbour of injured and on the previous dispute for drawing water, accused Nos.1 and 2 came out of their house for picking up quarrel against PW-2. Accused No.1 inflicted dharia blow on PW-2 Valjibhai and he also received injuries. Complaint lodged by him before Kalol Police Station is at Exh.16. PW-2 Valjibhai Nagarbhai examined at Exh.20, is the injured eye witness, who received injuries in the shape of one dharia blow at the hands of accused No.1 Manji Ranaji and some stick blows at the hands of accused Nos. 2, 3 and 4. He also stated that at the relevant juncture when he was in his house, accused Nos. 1 and 2 came with dharia and stick, the accused No.1 inflicted dharia blow on his right side of the head. He received stick injuries as well. He also stated that PW-1 Premabhai received injuries of stick blows at the hands of accused Nos.2, 3 and 4. PW-3 examined at Exh. 23, Sonaji is father of PW-1 and according to him he witnessed the incident and he also received injury of bite at the hands of accused No.1 on his right thumb. PW-4 Exh. 26 Kamlaben, examined by the prosecution, is wife of injured PW-2 and she stated about the previous dispute for drawing the water and thereafter she witnessed an incident as narrated by the injured. PW-5 Exh. 34 Dr.Lavendrasinh R. Gohil is examined by the prosecution to prove the injuries of the injured. According to him, at 2.15 hours, while he was Medical Officer at Ahmedabad Civil Hospital with the transfer letter from the Kalol Hospital he received PW-2 and found that the PW-2 had stick wounds on the right parietal region of size 10 cm. No other injuries were found. X-ray revealed one depressed fracture and multiple linear fracture on right parietal region and a surgery was performed on the injured on 18.7.1983. The injured was discharged from the hospital on 15.12.1983. He produced certificate in respect of injured PW-2 at Exh.36. PW-6 Exh. 38 is a panch witness Bachubhai Bababhai of panchnama of scene of offence produced on record at Exh.39. This panch witness has not supported absolutely the panchnama and therefore he was declared hostile witness. Thereafter, PW-7 at Exh.40 Investigating Officer Ramsinh Badimyabhai Bhabhar has been examined by the prosecution, who stated that on investigation being entrusted to him, he recorded the statements and drawn the panchnama of scene of offence. On the same day i.e. on 18.7.1983 at 11.15 hours, accused Nos. 1 and 2 were arrested and were sent to the court custody. On 21st of

July, 1983, accused Nos. 3 and 4 were arrested and recovery panchnama of weapons was drawn in the presence of panchas which was produced at Exh. 42 and on 1st of October, 1983 Dying Declaration of injured Valjibhai was also recorded by the Executive Magistrate at Ahmedabad Civil Hospital and that dying declaration was kept with the papers and ultimately charge sheet came to be filed as aforesaid against the present respondents.

3. Learned APP RC Kodekkar for the appellant State and Ms. Nita C. Banker, learned Advocate appointed for the respondents were heard at length.

4. From the above evidence, after hearing both the parties and taking into consideration the written argument on behalf of the prosecution, the learned Trial Judge came to the conclusion that the charges levelled against the respondents could not be proved by the prosecution beyond reasonable doubt and, therefore, they were entitled to be acquitted of the charges levelled against them and hence this acquittal appeal by the State.

5. The learned Magistrate referred to the contradictions in the evidence of prosecution case, which were beyond reconciliation and came to the conclusion that the witnesses including the injured witness was not trustworthy of credit. The learned Judge also appreciated the fact that in cross-examination of the Investigating Officer as well as of the injured witness, it was brought by the defence on record that in dying declaration the injured witness described the incident differently. Not only that but one more person, named as Shankar, who was son of the owner of the houses situated at Ambikanagar was involved in the above said incident. Though the defence filed an application to produce the said dying declaration on record, but even then, the prosecution failed to produce the said dying declaration on record. The learned Judge also took into consideration the fact that the place of scene of offence was changed by the witnesses and therefore no absolute reliance can be placed on any of the prosecution witnesses including the injured witness.

6. It is settled law that the plenitude of power available to the court hearing an appeal against acquittal is the same as that available to the court hearing an appeal against conviction, but the High Court will not interfere solely because a different plausible view may arise on the evidence. In serious cases, if the reasons given by the trial court for discarding the

testimony of the eye witnesses are not sound, then there should be no hesitation on the part of the High Court in interfering with an order of acquittal. If the judgment of the trial Judge was absolutely perverse, legally erroneous and based on wrong testimony, it would be proper for the High Court to interfere and reverse the order of acquittal, but when it is found that the Trial Court appreciated the evidence in its true perspective and when the Trial Court did not travel beyond the evidence on record, and when it is found that the reasoning of the Trial Court are not perverse and illegal, causing miscarriage of justice, the High Court must be slow in interfering with the acquittal appeals, even if the other view may be possible on appreciating the evidence.

7. Anyhow, after adverting to the reasons recorded by the Trial Court for acquitting the respondents, an independent, objective and dispassionate scrutiny and appreciation of evidence was undertaken by this Court. On re-appreciation, it is found that the complainant Premabhai PW-1, PW-3 Sonaji Exh.23, father of complainant, PW-4 Exh.26 Kamlaben, widow of the injured were not the eye witnesses of the incident which took place between accused Nos. 1 and 2 and the injured. This is obvious from the deposition of the Investigating Officer PW-7 Exh.40, when he categorically stated that Kamlaben PW-4 was not the eye witness for the prosecution. While going through the evidence of injured witness PW-2 Valjibhai Exh.20, it is categorically clear that PW-1 Premabhai, PW-3 Sonaji, PW-4 Kamlaben came to the spot of incident only after a blow of dharia was inflicted by accused No.1 on PW-2. The evidence of these witnesses therefore was rightly discarded by the Trial Judge to be unreliable. The contradictions from the evidence of witnesses PW-1, PW-3 and PW-4 alleged to be eye witnesses which are proved by the defence through the deposition of IO. Therefore attempt on the part of these witnesses to pose themselves as eye witnesses raise doubt in the credibility of these witnesses. Above all injuries to PW-1 Premabhai could not be proved by the prosecution through Medical Officer of the Kalol Hospital.

8. True it is that the prosecution case cannot be failed if the witness exaggerates the story. Duty of the court is to shift the evidence and search the truth. According to this court, this exercise was properly undertaken by the Trial Court. Even then, the evidence of PW-2 injured witness Valjibhai is required to be appreciated and there must be some reasons for not to

place reliance on the injured witness. True it is that the court must bear in mind while appreciating the evidence of injured witness that due to injuries, the presence of the witness at the place of incident cannot be doubted and that ordinarily injured would not rope in false culprits in place of real accused, and it is also true that in this exercise, the minor discrepancies in the evidence of injured eye witness may be ignored through realistic approach of appreciation of evidence. While the evidence of injured witness PW-2 Valjibhai is put to this test, it is found that the inconsistent flow of the prosecution story leads to raising of doubts about the credibility of the injured witness. Many contradictions were proved by the defence in the evidence of IO with reference to the evidence of injured witness PW-2. The first reason which discredits the evidence of PW-2 is medical certificate issued by the Civil Hospital, Kalol, has been produced on record, but no attempt has been made to prove those injuries either in respect of PW-1 or in respect of PW-2. Exh. 37 placed on record which is the transfer chit from Kalol Hospital to Ahmedabad Civil Hospital denotes that the said chit was endorsed by the concerned Doctor at 8.15 p.m. on that day and PW-2 reached Ahmedabad Hospital at 9.15 p.m. as evidenced by the medical certificate Exh. 36 which denotes one stitched wound over right front parietal region of 10 cm size. The Doctor who examined the injured PW-2 first point in time could not be examined by the prosecution to prove the injuries of the injured witness PW-2 Valjibhai. This fact is required to be appreciated with the evidence of PW-2 when he categorically stated that he reached at the Kalol Hospital at about 6.15, on that day and he was not treated at all at Kalol and injury being serious he was immediately taken to Ahmedabad Hospital from Kalol at about 6.30 p.m. This is the contradiction affects the core of the prosecution case. Secondly, Exh. 37 certificate as well as the evidence of Dr. Lavendra Sinh Exh. 33 makes it clear that no other injuries were found on the body of injured witness. While narrating the incident, PW-2 Valjibhai attributes other injuries by accused Nos. 2, 3 and 4 as well. This is inherent infirmity in the prosecution case leading to the conclusion that PW-2 did not narrate the prosecution incident as it had occurred. There are other two very important reasons to come to the conclusion that PW-2 though is an injured witness, his evidence is not creditworthy besides PW-2 did not disclose the incident as it had taken place. However, the prosecution failed to prove the place of offence. A panchnama of scene of offence though placed on record at Exh. 39, but could

not find any support from panch witness PW-6 Bachhubhai Exh.38. That apart, the complaint, filed by the complainant placed on record at Exh. 16, clearly denotes that the scene of offence was out on the road between the houses situated while all the witnesses including PW-2 Valjibhai clearly stated that the quarrel took place in the Osri (front part of the house) of PW-2. This infirmity is not explained by the prosecution nor an attempt has been made on behalf of the prosecution to prove the panchnama of scene of offence even through the evidence of Investigating Officer. This infirmity in the prosecution case invariably leads to the conclusion that the prosecution witnesses including injured witness did not narrate the true version of the incident and, therefore, also though the PW-2 is an injured witness, due to inherent infirmity in his evidence, it is unsafe to rely absolutely for conviction of the respondents. The second major infirmity is in respect of dying declaration recorded by the Executive Magistrate of PW-2 at Ahmedabad. The defence alleged that in dying declaration PW-2 injured narrated the different stories before the Executive Magistrate to the extent that both the accused and one Shri Shankar came to the house of PW-2. He was caught by accused No.2 and they inflicted some blows on his head but he could not realised that what was the weapon. The defence is entitled to ask such contradiction to the witness without showing the witness his previous statement, but when witness denies to have stated as alleged by the defence, then, the attention of the witness is required to be drawn on his previous statement to prove the contradiction. In this respect the defence attempted to get the original dying declaration produced on record, but the prosecution failed to produce the same. It cannot be said that the contradiction alleged between the prosecution story narrated by the witness before the court and before the Executive Magistrate was proved, but certainly non-production of dying declaration by the prosecution, even if the defence had asked for it, leads to drawing adverse inference against prosecution, and this is most important fact to disbelieve PW-2 even if PW-2 Valjibhai happens to be an eye witness. The court is certainly empowered to see dying declaration as previous statement of the witness when such statement is not relevant as dying declaration.

9. Learned APP Mr. Kodekkar attempted vehemently to convert the acquittal into conviction. It was submitted that the version of the complainant was corroborated by other witnesses. The injury of PW-2 was proved by medical evidence and the ocular evidence of the witnesses

are found cogent and no inherent improbability was present in the evidence of the witnesses. It was submitted that though the panchnama of scene of offence and the recovery panchnama were not proved, but the ocular evidence of the witnesses inspire confidence to saddle liability of the charges levelled against the respondents. It was submitted that the Trial Court discarded the evidence of the witnesses only on the ground that they were interested witnesses.

10. As discussed above, the court is unable to accept the contentions raised on behalf of the appellant State for the aforesaid reasons. True it is that, failure to seize blood stain clothes of the injured by the Investigating Officer or failure on the part of the prosecution to prove the recovery panchnama itself is not fatal to the prosecution case, if the ocular version of the witnesses inspire confidence. The Trial Court has gone through the each vital aspect of the matter in appreciating the evidence of witnesses and came to the conclusion that the case of the prosecution could not be proved against the respondents beyond reasonable doubt. The witnesses are not creditworthy only because they are interested but the witnesses are not creditworthy because their evidence suffers inherent infirmity, as said above. Therefore, in acquittal appeals, there must not be interference by the High Court on casual basis or on a mere possibility that on the basis of the evidentiary material on record it may be possible to convict the accused. If the Trial Court has grossly misinterpreted the evidence or has ignored the relevant evidence on record, interference would be possible by the High Court. While going through the evidence of the witnesses and judgment of the Trial Court and even after appreciating the evidence independently, it is found that the judgment and order of acquittal assailed in this appeal is eminently sustainable and does not justify interference by this Court in this Appeal. Accordingly, this Appeal is dismissed. Bail bonds of the respondents stand cancelled.

(J.R. Vora, J.)